

REMARKS

Claims 1-47 are rejected under 35 USC 102(e) as being unpatentable over Horowitz, (USPN 6,349,290).

Applicant reiterates Applicant's arguments, which accompanied Applicant's response of 8 March 2005. Additionally, Applicant has filed a Notice of Appeal in the present case. Applicant would appreciate the Examiner's entry of the amendments and remarks herein for purposes of the appeal if the Examiner is not prepared to allow the application or withdraw the Final Rejection.

The Examiner has rejected the claimed invention under 35 USC 102(e), *i.e.*, the cited reference is deemed to anticipate the claimed invention. Anticipation requires that the cited reference teach each and every element of the claimed invention. That is, the cited reference must be, in effect, a complete teaching of the claimed invention.

Here, the rejection is fatally defective.

Starting with the preamble of the independent claims, *i.e.*, Claims 1, 28, 35, 37, 43, 44, 45, 46 and 47, Applicant notes that the claimed invention is directed to "monitoring business performance indicators" (Claims 1 and 28); "monitoring a plurality of business metrics" (Claims 35 and 37); and "monitoring a business metric" (Claims 44, 45), as well as "monitoring business performance indicators" (Claims 46 and 47).

Additionally, Claim 43 recites in the first limitation in the claim's body, "data that represents the business metric."

Accordingly, all of the claims are limited to the monitoring of business performance indicators or business metrics. In contrast thereto, Horowitz is concerned with the

presentation of products and services of a financial institution. The Horowitz invention provides individualized business advice to a consumer of financial services based upon context. The provision of advice with regard to financial services has nothing to do with monitoring business performance indicators or business metrics. Although little weight is given to the preamble of a claim, nonetheless, to anticipate the claimed invention, the cited reference must teach the claimed invention, and an advice system, such as Horowitz's, by definition does not teach a system for monitoring business performance indicators.

The Examiner has responded to Applicant's statement that Horowitz does not teach "a data source having a predefined format" by reciting Horowitz's statement at Column 3, lines 58-65. The Examiner has emphasized that the Horowitz invention disseminates "information regarding new products and/or services to the most interested customers." First, as noted above, this has nothing to do with Applicant's invention, which is concerned with monitoring business performance indicators or methods. More importantly, Applicant is at a loss to see how this teaches Applicant's "data source having predefined format."

The Examiner goes on to cite Column 4, lines 17-33 of Horowitz, highlighting that the Horowitz invention "analyzes information relating to the customer to identify one or more customer characteristics indicative of a type of advice preferable to the customer and automatically generates one or more items of advice of the type indicated to be preferable to the customer." The Examiner also indicates that Horowitz analyzes "information relating to the customer to identify one or more customer characteristics." Again, Applicant points out that this has nothing to do with the monitoring of business performance indicators or metrics. Further, Applicant cannot discern from this citation wherein the "data source having a predefined format" resides.

Despite the foregoing, the Examiner concludes that "Horowitz discloses a data source having a predefined format including information regarding new products and/or services to the most interested customers..." However, this is not what Applicant

claims, nor what Applicant's invention is concerned with. The Examiner is correct in asserting that Horowitz analyzes "information relating to the customer to identify one or more customer characteristics," but it is a broad leap of logic to read into Horowitz's teaching that Horowitz is concerned with "a data source having a predefined format." There is simply no teaching of this in Horowitz. The Examiner's reliance on Horowitz is misplaced and does not teach what Applicant teaches. Further, as noted above, the context of Horowitz is not that of a system for monitoring business performance indicators or metrics and is thus irrelevant.

The Examiner also indicates that Applicant has failed to claim "an agent taking as input data from the data source and translating such data into modified data." The Examiner then states, "Applicant's claim limitation only calls for an agent communicatively coupled to the data source, wherein the agent is configured according to the data source format and wherein the agent is operative to gather data from the data source and translate the data into a first modified format thereby creating modified data." Applicant cannot see the difference between the agent being "operative to gather data from the data source and translate the data into a first modified format thereby creating modified data" and "an agent taking as input data from the data source and translating such data into modified data." The Examiner has not indicated that this latter limitation distinguishes the claimed invention from Horowitz, but the Examiner making a point of this as not being disclosed in the claims is taken as an indication that the Examiner is tacitly acknowledging that this is not found in Horowitz by the Examiner's analysis thereof. Applicant has amended the independent claims to state that the agent "takes input data from the data source and translates the data into a first modified format..."

Again, Applicant is of the opinion that the language as originally presented in the claims is identical. Nonetheless, Applicant's language now comports with the Examiner's statement.

Further, Applicant notes that the limitation of gathering "data from the data source and [translating]...the data into a first modified format thereby creating modified data" is

clearly discussed in Horowitz as reference token data. First, for Horowitz to teach the agent, Horowitz must teach the data source. As noted above, no such data source is found in Horowitz. Therefore, Horowitz can have no such agent. Significantly, the long section of Horowitz quoted by the Examiner does not describe agent technology. Rather, the section relied upon by the Examiner teaches that a presentation engine receives a customer's input, parses the input, and sends it to an advice engine. The advice engine retrieves and reads token data for the customer, as well as financial institution data. In response to this, the advice engine generates advice for the customer. However, Applicant claims, "an agent communicatively coupled to the data source [note: no such data source is found in Horowitz] where the agent is configured according to the data source format [note: Horowitz does not teach the provision of an agent configured to a data source format] and wherein the agent takes input data from the data source and translates the data into a first modified format thereby creating modified data [note: Horowitz is silent with regard to the translation of data into any modified format]."

Accordingly, the Examiner's rejection is defective in that Horowitz does not teach the agent claimed by Applicant.

Applicant also claims a reaper. The Applicant's reaper is coupled to the agent to retrieve modified data from the agent. The Examiner has relied upon the same citation to teach the reaper. Yet, Applicant can find no such item in Horowitz. The reaper Applicant claims must be communicatively coupled to an agent to retrieve modified data from the agent. As discussed above, there is no such agent in Horowitz and therefore can be no such reaper.

Applicant's claims also require a data repository that is communicatively coupled to the reaper for storing modified data. As discussed above, there is no such reaper found in Horowitz and no such modified data. Accordingly, there can be no such data repository in Horowitz. The fact that Horowitz may provide a storage medium of some sort is irrelevant. The anticipation of the claimed invention by Horowitz requires that Horowitz

teach each and every element in Applicant's claims. Applicant does not teach a general purpose storage device. Applicant teaches a specific data repository coupled to a reaper and configured to store modified data. Horowitz does not teach this.


Applicant cannot find "an alert detector" at any point in Horowitz. Horowitz is an advice system, not an alert system. Further, Applicant's alert detector compares modified data with the first configuration parameter. The Examiner has failed to establish where in Horowitz such element is found. Again, the claimed invention is concerned with monitoring business performance indicators or metrics, not with providing advice to customers of financial services.

Further, Horowitz does not teach "a dashboard controller." Here, the Examiner relies upon Figures 25 and 26 of Horowitz. However, these figures have nothing to do with displaying "modified data in a format defined by a second configuration parameter."

In view of the foregoing, Applicant considers the rejection on Horowitz for anticipation entirely defective. Horowitz fails to teach any of the claimed elements in the invention and the only proper response is to withdraw the rejection for Horowitz.

Applicant again reminds the Examiner that Applicant's claims are entitled to a presumption of validity and that the burden is on the Examiner to establish the unpatentability of Applicant's claims, for example, as being anticipated by the prior art. Here, the Examiner has failed to establish that each and every element of the claimed invention is found in the cited reference. In summary, the cited reference is not concerned with the same technology as that of the claimed invention and therefore cannot teach Applicant's invention. Additionally, none of the claimed elements set forth in Applicant's claims are found in the cited reference. In effect, the Examiner's position is that Horowitz is identical to what Applicant is claiming. This clearly is not the case.

Should the Examiner find it helpful, he is encouraged to contact Applicant's attorney,
Michael A. Glenn, at 650-474-8400.

Respectfully submitted,

Christopher Peil

Reg. No. 45,005

Customer No. 22862